



This document is scheduled to be published in the Federal Register on 06/06/2014 and available online at <http://federalregister.gov/a/2014-13293>, and on FDsys.gov

4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SATS No. ND-053-FOR; Docket ID No. OSM-2012-0006;
S1D1SSS08011000SX066A00067F144S180110;
S2D2SSS08011000SX066A00033F14XS501520]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement,
Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are issuing a final decision on an amendment to the North Dakota regulatory program (the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 ("SMCRA" or "the Act"). Our decision approves the amendment. North Dakota proposed changes to the North Dakota Administrative Code (NDAC) to address letter of credit provisions in the collateral bond rules under Section 69-5.2-12-04. The changes involve financial information and various notices that banks issuing a letter of credit must provide to the North Dakota Public Service Commission (hereinafter, the "Commission").

EFFECTIVE DATE: [Insert date of publication in the Federal Register]

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SUPPLEMENTARY INFORMATION:

- I. Background on the North Dakota Program
- II. Submission of the Proposed Amendment

- III. Office of Surface Mining Reclamation and Enforcement's (OSMRE's) Findings
- IV. Summary and Disposition of Comments
- V. OSMRE's Decision
- VI. Procedural Determinations

I. **Background on the North Dakota Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act...; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 15, 1980, Federal Register (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30

CFR 934.15, 934.16, and 934.30.

II. Submission of the Proposed Amendment

By letter dated February 2, 2012, North Dakota sent us an amendment to its program (SATS number: ND-053-FOR, Administrative Record Document ID. OSM-2012-0006-0002) under SMCRA (30 U.S.C. 1201 et seq.). North Dakota submitted the amendment to include changes made at its own initiative.

North Dakota proposed to change the letter of credit provisions in its collateral bond rule at NDAC 69-5.2-12-04 which addresses the financial information that banks issuing a letter of credit must provide to the Commission. Specifically, North Dakota proposed to revise its rules by adding an option that allows banks to provide a certified copy of financial reports that are required by a Federal banking agency rather than submit a balance sheet that is certified by a certified public accountant (CPA). North Dakota also proposed a change that affects the provision requiring banks to give the Commission notice of actions alleging insolvency or bankruptcy. North Dakota is proposing these changes both in order to avoid conflict with Federal and State banking regulations and to assist banks that

may have difficulty submitting CPA certified balance sheets.

We announced receipt of the proposed amendment in the April 25, 2012, Federal Register (Vol. 77, No. 80 FR page number 24661). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record Docket ID OSM-2012-0006).

We did not hold a public hearing or meeting because no one requested one. The public comment period ended on May 25, 2012. We did not receive any comments.

III. OSMRE's Findings

30 CFR 732.17(h)(10) requires that State program amendments meet the criteria for approval of State programs set forth in 30 CFR 732.15, including that the State's laws and regulations are in accordance with the provisions of the Act and consistent with the requirements of 30 CFR Part 700. In 30 CFR 730.5, OSMRE defines "consistent with" and "in accordance with" to mean (a) with regard to SMCRA, the State laws and regulations are no less stringent than, meet the minimum requirements of, and include

all applicable provisions of the Act and (b) with regard to the Federal regulations, the State laws and regulations are no less effective than the Federal regulations in meeting the requirements of SMCRA.

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

A. Revisions to North Dakota's Rules That Are the Same as or Similar to the Corresponding Provisions of the Federal Regulations.

North Dakota proposed changes to existing language in subsections (d) and (f) of NDAC Section 69-05.2-12-04. The proposed changes include additional conditions that banks must meet in order for the Commission to approve a coal operator's collateral bond pledging a letter of credit. The proposed rule changes are intended to ensure that banks issuing letters of credit to the North Dakota Public Service Commission (hereinafter, "the Commission") maintain a certain degree of fiscal health and provide notice to the Commission and permittee of insolvency, bankruptcy, or regulatory requirement violations.

1. Performance Bond - Collateral Bond, at NDAC Sections 69-05.2-12-04(2)(d) and (f)

North Dakota proposed to revise NDAC Section 69-05.2-12-04(2)(d), which deals with notifications of the fiscal health of banks that issue letters of credit to the Commission. As previously written, the rules required that letters of credit submitted to the Commission be accompanied by a balance sheet and that updated balance sheets must be submitted regularly every year. North Dakota's proposed rule change provides banks with an alternative to submit certified copies of financial reports that are already required under Federal banking regulations. The Federal regulations governing collateral bonds pledging letters of credit are found at 30 CFR 800.21(b). The currently-approved State rules provide specific conditions for letters of credit that were found to be no less effective than Federal regulations [69 FR 2663]. Similarly, the proposed revision to NDAC 69-05.2-12-04(2)(d), although relaxing currently-approved State requirements, adds specificity to Federal requirements. Therefore, we find that the proposed change to NDAC 69-05.2-12-04(2)(d) is no less effective than the Federal regulations. Accordingly, we approve it.

North Dakota also proposed to revise NDAC Section 69-05.2-12-04(2)(f), which states that banks shall give prompt notice to the permittee and the Commission of notices received or actions filed alleging insolvency, bankruptcy, or banking regulatory requirement violations that could result in suspension or revocation of the bank's charter or license to do business. The proposed amendment contains language that limits the amount of information provided in the notice to what is permitted by State and Federal banking laws. North Dakota proposed this rule change to avoid conflict with various Federal and State banking regulations. The counterpart Federal regulations to subsection (f) are found at 30 CFR 800.16(e). 30 CFR 800.16(e)(1) requires that the bond shall "provide a mechanism" for a bank to notify the regulatory authority, or in this case the Commission, of actions filed alleging insolvency, bankruptcy, or banking regulatory requirement violations that could result in suspension or revocation of the bank's charter or license to do business. Furthermore, 30 CFR 800.16(e)(2) requires that the permittee shall promptly notify the regulatory authority of the aforementioned actions. Since North Dakota's proposed rule change does not weaken the requirement that a "mechanism" exists for banks to notify the Commission of alleged insolvency,

bankruptcy, or banking regulatory requirement violations, we find that the proposed change to NDAC 69-05.2-12-04(2)(f) is no less effective than the counterpart Federal regulations at 30 CFR 800.16(e) and we approve it.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record Document ID No. OSM-2012-0006-0002), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various State and Federal agencies with an actual or potential interest in the North Dakota program (Administrative Record Docket ID No. OSM-2012-0006).

We received responses from both the Bureau of Land Management (BLM) and the Mine Safety and Health Administration (MSHA). BLM

stated in a letter dated February 17, 2012, that they had no comments on North Dakota Amendment XXXIX (Administrative Record Document ID No. OSM-2012-0006-0004). MSHA stated in a letter dated March 5, 2012, that they concurred with the proposed revisions and had no further comment (Administrative Record Document ID No. OSM-2012-0006-0006).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) and the Clean Air Act (42 U.S.C. 7401 et seq.).

None of the revisions that North Dakota proposed to make in this amendment pertain to air or water quality standards. Although OSM did not ask EPA to concur on the amendment, we did request EPA to comment on the amendment (Administrative Record ID No. OSM-2012-0006-0005). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On February 7, 2012, we requested comments on North Dakota's amendment (Administrative Record Document ID No.OSM-2012-0006-0005), but neither responded to our request.

V. OSMRE's Decision

Based on the above finding, we approve North Dakota's February 1, 2012 amendment.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 934, which codify decisions concerning the North Dakota program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630 - Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866 - Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988 - Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM.

Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132 - Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175 - Consultation and Coordination With
Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211 - Regulations That Significantly Affect
The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply,

distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C) *et seq*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C.

601 et seq.). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State

submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded Mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 12, 2014.

Allen D. Klein
Director,
Western Region

For the reasons set out in the preamble, 30 CFR 934 is amended
as set forth below:

PART 934 - NORTH DAKOTA

1. The authority citation for part 934 continues to read as
follows:

Authority: 30 U.S.C. 1201 et seq.

2. Section 934.15 is amended in the table by adding a new entry
in chronological order by "Date of Final Publication" to read as
follows:

§ 934.15 Approval of North Dakota regulatory program
amendments

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * *	* *	
February 1, 2012	[Insert date of publication	NDAC 69-5.2-12-04

in the
Federal
Register]

[FR Doc. 2014-13293 Filed 06/05/2014 at 8:45 am; Publication
Date: 06/06/2014]